

U.S. Serial No. 09/214,022
Art Unit 1772

Amendment H

Remarks:

The Examiner has continued the rejection of claims 14, 16, 27, 28, and 30 under 35 U.S.C. 103(a) as unpatentable over Zinn, U.S. Patent No. 2,558,918 in view of the Background section of Applicant's specification.

The Examiner has also continued the rejection of claims 15 and 29 under 35 U.S.C. 103(a) as unpatentable over Zinn in view of Applicant's specification as applied to claims 14, 16, 27, 28, and 30 above, and further in view of Skjelby, U.S. Patent No. 4,206,867.

Last, the Examiner has continued the rejection of claim 17 under 35 U.S.C. 103(a) as unpatentable over Zinn Applicant's specification as applied to claims 14, 16, 27, 28, and 30 above, and further in view of Hecking, U.S. Patent No. 4,712,737 or Nagata, U.S. Patent No. 4,909,432.

Without reiterating applicant's position vis-a-vis the examiner's characterization of the art and what the art may or may not disclose, the Examiner has, in fact conceded that Zinn fails to disclose that the cardboard blank and liner are coextensive with one another and that Zinn fails to disclose a liquid-tight coating disposed on the first layer outwardly of the second layer and a liquid tight coating disposed on the second layer outwardly of the first layer

The Examiner concedes that However, the Examiner nevertheless concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the layers coextensive. The Examiner states that one of ordinary skill would be motivated to do so because it would make manufacturing the carton faster and insure the entire carton would be lined.

It is applicant's position that Zinn completely fails to disclose the coextensive first and second (liner and base) layers and that contrary to the Examiner's assertion that it would have been obvious to do so, there is nothing that the Examiner has put forth that shows such a motivation or teaching. And, in fact, it is applicant's position that if one were to take the structure of Zinn and extend the liner out to the ends or edges of the cardboard, that structure, given the teachings of Zinn would not function.

Additionally, applicant submits that the Examiner makes this assertion only with the benefit of hindsight. That is, it is only with the present claims in hand that the Examiner can piece together different pieces of references (which in total do not disclose the claimed invention) to "make" the claimed invention. Simply put, the references of record do not provide

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the basis for the Examiner's rejections.

As to the Examiner's conclusions regarding the obviousness of adding a liquid tight coating disposed on the first layer outwardly of the second layer and a liquid tight coating disposed on the second layer outwardly of the first layer as taught by the specification (background art) to Zinn's carton because it would increase the barrier properties against liquids leaking out of the carton when used for containing liquids. In making this rejection, the Examiner states that process limitations are given little or no patentable weight and that the method of forming the product is not germane to the issue of patentability of the product itself.

Applicant is not asserting in the pending claims that the process is to be given weight. Rather, it is applicant's position that the invention is in fact patentable on the merits of the structure, function and materials of the claim. It is applicant's position that these are in fact structural and/or functional distinctions and not in fact process distinctions and as such, that that the Examiner's "process" considerations are misplaced and that examination on the merits as structural and/or functional limitations be made.

The Examiner has also taken the position that Zinn and the specification disclose all the limitations of the instant claimed invention except that the fold regions are treated with an adhesion counter acting agent, and that Skjelby discloses a coated paper board container and blank with a plurality of fold and non-fold regions and crease lines where some of the fold regions are treated with an adhesive which may be made of any suitable material, such as wax based material, and permits easy separation between layers and that it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the adhesive material of Skjelby to the crease lines of Zinn because it would help the liner more easily separate from the cardboard blank at the corners.

The Examiner further asserts that Zinn and Applicant's specification disclose all the limitations of the instant claimed invention except for the liner being made of aluminum or greaseproof paper and that Hecking discloses a carton comprising a paperboard lined aluminum foil and Nagata discloses a container comprising a thick paper lined with polyethylene, aluminum or the like, and has concluded that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use polyethylene or aluminum liner as suggested by Hacking or Nagata depending on the type material to be contained by the carton, i.e. liquid or solid.

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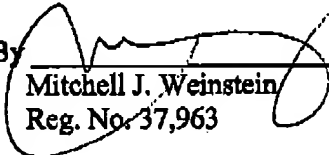
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It is applicant's position that based on the above remarks vis-a-vis the failure of Zinn to provide the basis for an obviousness rejection of the pending claims, claims 15, 17 and 29 are allowable over the art of record for the same reasons that their base claims (namely claims 14 and 27) are allowable over the art of record.

To this end, applicant submits that pending claims 14-17 and 27-30 are allowable over the art of record and respectfully solicits early indication of same. Applicant requests that, should the Examiner wish to discuss any outstanding matters, whether formal or substantive, the undersigned be contacted to discuss any such outstanding matters.

Applicant believes that there is no fee due in connection with the present amendment. If, however, there is a fee due, the Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 23-0920. In addition, should any petitions be necessary, Applicant requests that this paper constitute any such the necessary petition.

Respectfully submitted,

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